

EX. Q, pt. 1

COPY

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 SHAW FAMILY ARCHIVES, LTD.,
5 EDITH MARCUS, and META STEVENS

6 Plaintiffs,

7 - against -

8 CMG WORLDWIDE, Inc., an Indiana
9 corporation, and MARILYN MONROE,
liability company,

10 Defendants.

11 -----x
12 Ellen Grauer Court Reporters
13 126 East 56th Street
14 New York, New York

15
16 December 26, 2007
17 12:01 p.m.

18
19 30(b)(6) deposition of MARK
20 ROESLER, before Marlene Lee, CSR, CRR, a Notary
21 Public of the State of New York.

22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York
212-750-6434
Ref: 86257

1 ROESLER

2 MS. COLBATH: Objection.

3 A. The Indiana statute that was
4 enacted about 15 years ago provides for that
5 right.

6 Q. Is that it?

7 MR. MINCH: Objection.

8 A. Yes.

9 Q. That was the statute that you had
10 some role in, isn't it?

11 MR. MINCH: Objection.

12 MS. COLBATH: Objection.

13 A. I was involved, yes.

14 Q. How were you involved?

15 MR. MINCH: Objection.

16 A. Supported it. Supported it -- I
17 guess that's my role.

18 Q. How did you support it?

19 MR. MINCH: Objection.

20 MS. COLBATH: Objection.

21 A. I don't recall exactly. There were
22 a number of people on my staff involved in --
23 in -- after California enacted the right of
24 publicity statute in '85, it started a movement
25 for other states to clarify that. And Indiana

1 ROESLER

2 was a natural state to clarify it. So it
3 evolved over a couple of years. And the bill
4 was introduced. There was a sponsor. We -- I
5 don't remember many more specifics other than
6 that.

7 Q. Uh-huh. That statute was passed
8 when? The Indiana statute.

9 MR. MINCH: Objection.

10 MS. COLBATH: Objection.

11 A. In the early '90s.

12 Q. When did CMG begin its -- the
13 process of supporting the statute, as you put
14 it?

15 MR. MINCH: Objection.

16 MS. COLBATH: Objection.

17 A. You know, maybe the late '80s,
18 early '90s.

19 Q. Did CMG submit a draft of the
20 statute for the Indiana Legislature to review
21 before it was enacted?

22 MR. MINCH: Objection.

23 MS. COLBATH: Objection.

24 A. I don't have a specific
25 recollection.

1 ROESLER

2 Q. Do you recall ever saying to
3 anybody anywhere that CMG was the one who wrote
4 the statute?

5 MR. MINCH: Objection.

6 MS. COLBATH: Objection.

7 A. I -- I may -- I may have taken --
8 our companies may have taken credit for helping
9 support it and spearheading it through. I
10 don't know if "wrote" is the right terminology.

11 Q. Now, turning to the California
12 right of publicity that you assert exists, what
13 is the basis for your statement that MMLLC has
14 a right of publicity in the jurisdiction of
15 California in Marilyn Monroe?

16 MR. MINCH: Objection.

17 MS. COLBATH: Objection.

18 A. Just that the statute applies to
19 California domiciliaries, and lasts for 70
20 years after death.

21 Q. Anything else?

22 MR. MINCH: Objection.

23 A. No.

24 Q. Do you ever recall representing to
25 anyone that Marilyn Monroe died a domiciliary

1 ROESLER

2 A. Mine's signed by Orin Snyder.

3 MR. MINCH: Sorry about that.

4 Q. On the next page after that there's
5 a signature by Ted Minch. Do you see that?

6 A. I do.

7 Q. Mr. Minch is your attorney in this
8 matter; correct?

9 A. Correct.

10 Q. You have no reason to believe that
11 this is not the document that was submitted in
12 connection with this matter, do you?

13 A. That's correct.

14 Q. Did you review this document before
15 it was filed?

16 A. Yes.

17 Q. When?

18 A. Late July. Early August. I'm not
19 sure.

20 Q. To make sure that all the factual
21 representations in here were true and accurate;
22 is that right?

23 MS. COLBATH: Objection.

24 MR. MINCH: Objection.

25 A. Yes, that's correct.

1 ROESLER

2 Q. Sitting here today, you don't have
3 any reason to believe that any of the factual
4 representations in this complaint are untrue,
5 do you --

6 MR. MINCH: Objection.

7 A. Not that I know of.

8 Q. -- or misleading in any way?

9 MR. MINCH: Objection.

10 A. Not that I know of.

11 Q. And as head of CMG, certainly if
12 there was anything in here that was incorrect,
13 you would notify your attorneys of that and
14 make the necessary corrections; correct?

15 A. I would endeavor to, yes.

16 Q. Turning to the 30(b)(6) notice, No.
17 1, the factual basis for Count 1 in defendants'
18 Third Amended Complaint, what is the factual
19 basis for Count 1 in defendants' Third Amended
20 Complaint as far as CMG is concerned? To help
21 you, I turn you to page 6 where Count 1 starts
22 and goes on till the end.

23 What is the factual basis for Count
24 1?

25 A. Just that the Shaw Group, through

1 ROESLER

2 the representative Bradford, has -- represents
3 various licensees. That their images are
4 protected by copyright and we do not believe
5 that to be the case.

6 Q. Anything else?

7 A. I think that's the basis, you know.
8 I think that's it.

9 Q. What images does CMG -- let me
10 rephrase. What images of Marilyn Monroe in the
11 Shaw family collection does CMG believe are in
12 the public domain?

13 A. All of the images that were
14 published between -- you know, prior to, I
15 believe, '77. All the images that were
16 published that did not have notice on them, we
17 know that those are in the public domain. We
18 know the Rizzoli book is in the public domain.
19 And we -- and from my -- from my meetings with
20 the two daughters, I also knew that there were
21 issues with these images being -- having valid
22 copyrights.

23 Q. Let's start with your first
24 statement, which is, "All images that were
25 published prior to '77 without notice are in

1 ROESLER

2 the public domain." 1977, are you referring
3 to?

4 What particular images are you
5 referring to in the Shaw family collection of
6 Marilyn Monroe?

7 MS. COLBATH: Objection.

8 MR. MINCH: Objection.

9 A. Images taken by Mr. Shaw.

10 Q. Can you identify them any further
11 than that?

12 MR. MINCH: Objection.

13 MS. COLBATH: Objection.

14 Q. Any particular books? Names of
15 photographs?

16 A. There were many publications back
17 in those times, like Photoplay, and different
18 publications that published -- continually
19 published these different photos of people like
20 Marilyn Monroe and other entertainment
21 personalities. So there were many, many, many,
22 many images all published at that time.
23 Typically they were all published without
24 notice, or many of them were published without
25 notice.

1 ROESLER

2 Q. Can you refer to any particular
3 books that were published that are in the Shaw
4 Family collection that were published before
5 1977 without notice?

6 MR. MINCH: Objection.

7 MS. COLBATH: Objection.

8 Q. Any specific books?

9 MS. COLBATH: Objection.

10 A. No. I don't know of any particular
11 books.

12 Q. Can you identify any particular
13 Shaw Family registrations for images of Marilyn
14 Monroe that were published prior to -- that are
15 for images of Marilyn Monroe that were
16 published prior to 1977 without notice?

17 MS. COLBATH: Could I have the
18 question read back? I think I have an
19 objection.

20 (The pending question was read
21 back.)

22 MS. COLBATH: Objection.

23 MR. MINCH: Objection.

24 A. I don't understand that question.

25 Q. Often -- usually a registration

1 ROESLER

2 will have a title to it.

3 A. Right.

4 Q. Some way to identify it; correct?

5 (Discussion off the record.)

6 Q. Generally a copyright registration
7 has a title to identify it; correct?

8 MS. COLBATH: Objection.

9 MR. MINCH: Objection.

10 A. Often.

11 Q. Can you identify any of the titles
12 of Shaw Family registrations for Marilyn Monroe
13 that are for images of Marilyn Monroe that were
14 published prior to 1977 without notice?

15 MS. COLBATH: Objection.

16 MR. MINCH: Objection.

17 A. I'm aware of at least two copyright
18 registrations that were filed for the Shaw --
19 by the Shaws. But I thought those were after
20 '77. But I'm not sure, without looking at
21 them. I thought they were for two different
22 books. So I don't know if that's responsive to
23 your question.

24 Q. Well, I'm referring to the ones
25 that were published prior to '77, following

1 ROESLER

2 your testimony.

3 MS. COLBATH: Objection.

4 A. I'm sorry. I still don't
5 understand your question.

6 Q. I'll rephrase it.

7 MR. SERBAGI: If you can read it
8 back.

9 MS. COLBATH: The witness said he
10 didn't understand the question. Having
11 it read back I don't think cures that.

12 MR. SERBAGI: Go ahead.

13 MS. COLBATH: Objection to form.

14 MR. SERBAGI: I'll start again.

15 Q. To set up the question a little
16 bit, you were talking about copyright
17 registrations generally have titles to identify
18 them; correct?

19 A. Okay.

20 Q. And you had testified earlier
21 that -- when I asked you what images of Marilyn
22 Monroe from the Shaw Family collection were in
23 the public domain, you testified that those
24 published prior to 1977 without notice. Do you
25 recall that?

1 ROESLER

2 A. That's correct.

3 MR. MINCH: Objection.

4 Q. And what I'm asking is: Can you
5 identify the titles of any Shaw Family
6 copyright registrations of Marilyn Monroe that
7 are for images of Marilyn Monroe that were
8 published prior to 1977 without notice?

9 MS. COLBATH: Objection.

10 MR. MINCH: Objection.

11 A. I -- I don't think I can. I'm
12 still a little confused by the question. But I
13 think my answer is, I don't think I can.

14 Q. I want to make sure that I'm fair
15 to you and that you completely understand the
16 question.

17 A. Okay.

18 Q. Sometimes this process is
19 difficult. I want to ask it in a way that you
20 understand.

21 A. Okay.

22 Q. Maybe if you tell me what you don't
23 understand about the question, I can clarify it
24 for you.

25 MS. COLBATH: Objection.

1 ROESLER

2 MR. MINCH: Objection.

3 A. I'm unclear about what registration
4 you're speaking about and what the time period
5 of that registration is.

6 Q. Well, any registration that is
7 for -- in the Shaw Family collection for a
8 Marilyn Monroe image --

9 A. Okay.

10 Q. -- that covers an image of Marilyn
11 Monroe that was published prior to 1977 without
12 notice.

13 MS. COLBATH: Objection.

14 MR. MINCH: Objection.

15 MS. COLBATH: Could I have that
16 question read back? It didn't sound
17 like -- I think he appended a question at
18 the end. Read back that last question.

19 Q. What I'm asking you is to identify,
20 if you can, the title of any Shaw Family
21 copyright registration for Marilyn Monroe --

22 MS. COLBATH: Objection.

23 MR. MINCH: Objection.

24 Q. -- that covers an image of Marilyn
25 Monroe prior to 1977 without notice.

1 ROESLER

2 MS. COLBATH: Objection.

3 MR. MINCH: Objection.

4 A. I'm trying to chart this out so I
5 understand your question. But you're talking
6 subsequent to 1977, a registration that might
7 go back and cover something that was published
8 prior to '77; is that correct?

9 Q. The registration itself can be any
10 date. I'm just asking you to identify any Shaw
11 Family copyright registration for Marilyn
12 Monroe that is for an image that was published
13 prior to 1977 without notice.

14 MS. COLBATH: Objection.

15 MR. MINCH: Objection.

16 A. I -- I can't do that. I do know
17 that there were apparently two copyright
18 registrations in, I believe, after -- the late
19 1990s. And for what period of time --
20 obviously they were photos of Marilyn while she
21 was alive. But whether those were published
22 prior to that registration or not, I don't
23 know.

24 Q. Okay. You mentioned also, as part
25 of your answer when we were discussing -- let

1 ROESLER

2 me start -- let me rephrase. To give some
3 background, again, we're talking about your
4 testimony of Shaw Family images of Marilyn
5 Monroe that were published prior to '77 without
6 notice. And part of your answer earlier was
7 that you referred to various publications where
8 images of Marilyn Monroe were published without
9 notice prior to '77.

10 Can you identify, sitting here
11 today, the names of any of those publications
12 and when they were -- start with that.

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 Q. The names of those publications
16 that you referred to.

17 MS. COLBATH: Objection.

18 MR. MINCH: Objection.

19 A. One was Photoplay. I don't
20 remember all the names of the various
21 publications, but there were a myriad of
22 publications back then.

23 Q. Let's start with Photoplay.

24 MS. COLBATH: Were you finished
25 with the answer?

1 ROESLER

2 A. There were a myriad of publications
3 back in those days.

4 Q. Let's start with Photoplay. Can
5 you identify any Shaw Family image of Marilyn
6 Monroe that was published in Photoplay prior to
7 '77 without notice?

8 MS. COLBATH: Objection.

9 MR. MINCH: Objection.

10 A. I'm aware of many of them that were
11 published back then by --

12 Q. Name one.

13 MS. COLBATH: Objection.

14 MR. MINCH: Objection.

15 A. Name one particular photo? Well, I
16 don't have the name of a particular photo. I
17 mean, I could produce the -- I could produce
18 the Photoplays.

19 Q. I'm just asking if you know. Okay.
20 Now, the second part of your answer earlier was
21 that you believed -- I think you said you knew
22 that the Rizzoli book is in the public domain;
23 correct?

24 A. That's correct.

25 Q. The Rizzoli work, so we're clear,

1 ROESLER

2 is what's referred to in the Second Amended
3 Complaint; correct?

4 A. That's correct.

5 Q. What is the basis for your
6 statement that the Rizzoli book is in the
7 public domain?

8 A. Just the decision and my general
9 knowledge about the -- about that decision.

10 Q. What decision are you referring to,
11 sir?

12 A. The decision involving the Rizzoli
13 book that was handed down.

14 Q. What decision is that?

15 MR. MINCH: Objection.

16 MS. COLBATH: Objection.

17 A. I don't have a specific name of it.

18 Q. Did you review that decision?

19 MR. MINCH: Objection.

20 A. I don't know that I personally
21 reviewed it. But counsel had reviewed it.

22 Q. Do you know whether that decision
23 was final or not final?

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

1 ROESLER

2 A. I don't have specific information
3 on that.

4 Q. Well, prior to submitting this
5 complaint in this action, did you investigate
6 that matter?

7 MR. MINCH: Objection.

8 MS. COLBATH: Objection.

9 A. Not specifically.

10 Q. This decision that you're referring
11 to that you can't tell me what it is, can you
12 tell me what the Court held in that decision?

13 MS. COLBATH: Objection.

14 MR. MINCH: Objection. For the
15 record, are you testifying? Or is Mr.
16 Roesler testifying?

17 MR. SERBAGI: I'm leading up to my
18 question, so he understands.

19 MR. MINCH: I don't understand
20 who's testifying.

21 MS. COLBATH: You frequently make
22 speeches before questions. I find that
23 totally inappropriate. The witness is
24 here to answer your questions but not to
25 listen to speeches. I'd like to note

1 ROESLER

2 that for the record and ask that you
3 conform to the Federal Rules.

4 MR. SERBAGI: Let me tell you
5 something, Ms. Colbath. What I'm saying
6 before the question is purposely to lead
7 up to the question so the witness
8 understands the context of the question.
9 Sometimes it's not easy to ask a
10 question. I'm not making speeches.

11 Your speaking objections are
12 objectionable. They're interfering with
13 this deposition. And it's censurable
14 conduct, and I'm going to bring it before
15 Judge Fox. Let's continue.

16 Q. The decision that you're referring
17 to that spoke of Rizzoli as being in the public
18 domain, do you know what that Court held?

19 MS. COLBATH: Objection.

20 MR. MINCH: Objection.

21 A. Not specifically.

22 Q. I'm going to read you the question
23 that I asked earlier, and the answer, for
24 context purposes only so we understand where we
25 are right now.

1 ROESLER

2 I asked you, "What is the basis for
3 your statement that the Rizzoli book is in the
4 public domain?"

5 You stated, "Just the decision and
6 my general knowledge about that decision?"

7 What general knowledge about that
8 decision are you referring to, Mr. Roesler?

9 A. Just that various images of Marilyn
10 Monroe that were contained in that book were in
11 the public domain because they were published
12 without notice.

13 Q. What's the basis for your statement
14 that they were published without notice?

15 A. Just my general knowledge of
16 discussing it with Marilyn Monroe LLC's
17 counsel.

18 Q. Anything else?

19 A. No.

20 Q. What counsel are you referring to?

21 A. Gibson Dunn & Crutcher.

22 Q. When did that discussion take
23 place?

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

1 ROESLER

2 A. Around -- right after the decision.
3 Shortly after the decision.

4 Q. What decision? So we're clear for
5 the record.

6 A. The Rizzoli.

7 Q. Who did you speak with at Gibson
8 Dunn & Crutcher?

9 MR. MINCH: Objection.

10 A. I believe a man named Mr. Wegner.

11 Q. How long was that discussion?

12 A. I don't recall exactly. It was a
13 couple of years ago.

14 Q. Over the phone? Or in person?

15 MR. MINCH: Objection.

16 A. Phone.

17 MS. COLBATH: Objection.

18 Q. Longer than five minutes?

19 MR. MINCH: Objection.

20 A. I believe so. It was longer than
21 five minutes.

22 Q. Twenty minutes?

23 MR. MINCH: Objection.

24 MS. COLBATH: I'm going to caution
25 the witness not to disclose any of the

1 ROESLER

2 acknowledgment that it was approved or an
3 e-mail or something.

4 Q. And subsequent to the preparation
5 of a deal memo, is there any other document
6 prior to the formalized agreement between MMLLC
7 and the third party that is prepared?

8 MR. MINCH: Objection.

9 MS. COLBATH: Objection.

10 A. Not -- not that I know of. No.

11 Q. Does the deal memo bind the
12 respective parties?

13 MS. COLBATH: Objection.

14 MR. MINCH: Objection.

15 A. The respective parties being --

16 Q. Being CMG, MMLLC, and the third
17 party that wants to license images of Marilyn
18 Monroe.

19 MR. MINCH: Objection.

20 MS. COLBATH: Objection.

21 A. No. No.

22 Q. So until there's a formalized
23 license agreement, all the parties can walk
24 away without any legal consequences.

25 MR. MINCH: Objection.

1 ROESLER

2 MS. COLBATH: Objection.

3 Q. Is that correct?

4 A. Presumably. I mean, there's no
5 legally enforceable contract.

6 Q. Now, getting back to your earlier
7 testimony, when I asked you the basis -- and
8 now we're finally getting back to where this
9 all came from, the basis for CMG's belief
10 that -- I'm referring now to Roesler 1 -- the
11 factual basis for Count 1 in defendants' Third
12 Amended Complaint.

13 When I asked you what is the
14 factual basis for Count 1 in defendants' Third
15 Amended Complaint earlier, do you recall saying
16 that part of that is representations that the
17 Shaw Family has made to various licensees that
18 their images are protected by copyright, and
19 CMG does not believe that to be the case? Do
20 you recall that testimony?

21 MS. COLBATH: Objection.

22 MR. MINCH: I want to interject.

23 Perhaps he wants his answer read back to
24 him so that he can understand
25 specifically what his response was to

1 ROESLER

2 that given question.

3 Q. Well, if need be we'll go back to
4 it, but do you generally recall that testimony?

5 A. I do.

6 Q. Now, I want to ask you what you
7 meant by that. Representations to various
8 licensees. What did you mean?

9 A. The --

10 MS. COLBATH: Objection.

11 A. The activities that the estate --
12 I'm sorry -- that the Shaw Family collectively
13 is involved in. That was Larry when he was
14 alive, and their representative, the Bradford
15 Group.

16 Q. And what type of activities are you
17 referring to?

18 A. Their marketing activities.

19 Q. What type of marketing activities
20 are you referring to?

21 A. The manner in which they represent
22 the collection, the representations they make
23 to various licensees, the promotions they do,
24 the letters that they send out.

25 Q. Okay. Let's talk about the

1 ROESLER

2 representations made to various licensees.
3 What representations are you talking about?
4 Who made them, and to whom?

5 MS. COLBATH: Objection.

6 MR. MINCH: Objection.

7 Q. Let me rephrase. What
8 representations are you talking about?

9 MR. MINCH: Objection.

10 A. The representations that either the
11 family members make or their representative,
12 the Bradford Group, makes.

13 Q. What I'm trying to do is get at the
14 specific representations that you're talking
15 about. Who within the Shaw Family made the
16 representations that you're talking about?

17 A. Well, I mean, it's hard to recount
18 specifics. But it's -- I mean, numerous
19 representations. Larry used to make those
20 representations to -- I remember a company
21 called Dolce & Gabbana that Larry was
22 negotiating with, telling them that they only
23 needed a license for his images, copyright to
24 his images, to the representations that
25 Bradford makes as their representative.

1 ROESLER

2 Q. Anything else that you can think
3 of, sitting here today?

4 A. No. No.

5 Q. Let's talk about the representation
6 that you claim Larry made to Dolce & Gabbana.
7 Was that representation made in writing?

8 A. That Larry made to them? I don't
9 recall.

10 Q. So you don't know if it was writing
11 or verbally.

12 A. Right.

13 Q. What's the basis for the
14 representation?

15 MR. MINCH: Objection.

16 Q. Let me rephrase the question. When
17 did Larry make this purported representation to
18 Dolce & Gabbana?

19 MS. COLBATH: Objection.

20 MR. MINCH: Objection.

21 A. Maybe a year and a half ago, give
22 or take six months.

23 Q. Who did Larry speak to at Dolce &
24 Gabbana?

25 A. I don't remember the name.

1 ROESLER

2 Q. You don't know whether it was in
3 writing?

4 MR. MINCH: Objection.

5 MS. COLBATH: Objection.

6 A. I just know from Dolce & Gabbana
7 reporting back to us.

8 Q. Who at Dolce & Gabbana reported
9 back to you?

10 A. I don't know.

11 Q. Was it a he or she?

12 MR. MINCH: Objection.

13 A. I don't even remember if it was a
14 he or she.

15 Q. Was it in writing, or verbally?

16 MS. COLBATH: Objection.

17 MR. MINCH: Objection.

18 A. I don't recall that.

19 Q. So we're clear, what did -- was
20 this a representative of Dolce & Gabbana?

21 MR. MINCH: Objection.

22 A. Yes. Yes. It was -- go ahead.

23 It was on a tee-shirt program that
24 we were doing, and the thing we're doing
25 involving Marilyn Monroe.

1 ROESLER

2 Q. Do you recall the image that was at
3 issue of Marilyn Monroe?

4 A. With respect to the Shaw?

5 Q. Yes.

6 A. No, I don't recall the specific
7 image.

8 Q. Do you recall whether that image
9 was protected by copyright or not?

10 A. No.

11 MR. MINCH: Objection.

12 Q. Do you remember the title of the
13 person within Dolce & Gabbana who made this
14 purported representation?

15 MR. MINCH: Objection.

16 MS. COLBATH: Objection.

17 A. No.

18 Q. Do you know whether they had
19 authority to bind Dolce & Gabbana in their
20 representations or not?

21 MR. MINCH: Objection.

22 MS. COLBATH: Objection.

23 A. I'm assuming they did.

24 Q. What's the basis for that
25 assumption?

1 ROESLER

2 A. Just in the normal course of
3 dealings when you're dealing with -- with a
4 company. A company representative.

5 Q. Other than that, you have no other
6 basis?

7 A. No.

8 Q. How many images of Marilyn Monroe
9 were involved in this tee-shirt program that
10 you're referring to between Shaw Family
11 Archives and Dolce & Gabbana; do you know?

12 MR. MINCH: Objection.

13 A. I think there were four.

14 Q. What's the basis for that
15 statement?

16 MS. COLBATH: Objection.

17 A. My recollection.

18 Q. Do you, sitting here today, have a
19 basis for that recollection?

20 MR. MINCH: Objection.

21 MS. COLBATH: Objection.

22 A. Just by memory.

23 Q. Did this Dolce & Gabbana
24 representative tell you there were four images
25 involved?

1 ROESLER

2 A. Yes. But I was also dealing with
3 Larry on it, too. I had had a couple
4 discussions with Larry and Meta on it.

5 Q. What was the context of those
6 discussions?

7 A. The context of the discussions were
8 that Meta really wanted to be able to do that
9 Dolce & Gabbana program. So she asked me if I
10 could try to make it happen, and also involve
11 their images. And I said I would do my best to
12 make it happen and have it involve their
13 images. And I don't know -- I think. So
14 discussions were with me and Dolce & Gabbana
15 personally. I think some of the other
16 discussions were perhaps with Chris in the
17 office.

18 Q. But you don't recall what
19 particular images of Marilyn Monroe, sitting
20 here today, were at issue in that tee-shirt
21 program with Dolce & Gabbana?

22 MR. MINCH: Objection.

23 A. I don't think I ever knew what
24 specific images. I think they were dealing
25 directly with Larry on different images.

1 ROESLER

2 Q. Do you know if -- did Larry send a
3 cease-and-desist letter to Dolce & Gabbana?

4 MR. MINCH: Objection.

5 A. I don't know.

6 Q. Do you know if anybody at Shaw
7 Family Archives sent a cease-and-desist letter
8 to Dolce & Gabbana in connection with this
9 tee-shirt program?

10 MR. MINCH: Objection.

11 A. I don't know.

12 Q. Do you know if anybody at Shaw
13 Family Archives threatened Dolce & Gabbana in
14 any way with copyright infringement for using
15 Shaw Family images of Marilyn Monroe?

16 MR. MINCH: Objection.

17 A. I don't think they used them. I
18 think there was a discussion to use them.

19 Q. So Dolce & Gabbana had not
20 finalized any decision to use any particular
21 images of Marilyn Monroe during these tee-shirt
22 program discussions?

23 A. That's correct.

24 Q. Those discussions were in their
25 incipient stages; is that correct?

1 ROESLER

2 A. That's correct.

3 Q. Was a deal ever finalized with CMG
4 or MMLLC in connection with Dolce & Gabbana?

5 MS. COLBATH: Objection.

6 MR. MINCH: Objection.

7 Q. For uses of images of Marilyn
8 Monroe?

9 MS. COLBATH: Objection.

10 MR. MINCH: Objection.

11 Q. Let me rephrase. In connection
12 with this particular tee-shirt program we're
13 talking about, was there ever a finalized
14 agreement deal between MMLLC, CMG, and Dolce &
15 Gabbana?

16 MR. MINCH: Objection.

17 MS. COLBATH: Objection.

18 A. Yes.

19 Q. What was the nature of that
20 agreement?

21 MR. MINCH: Objection.

22 A. Well, the nature of the agreement
23 was a licensing agreement.

24 Q. Between Dolce & Gabbana and MMLLC?

25 A. That's correct.

1 ROESLER

2 Q. For uses of images of Marilyn
3 Monroe?

4 MR. MINCH: Objection.

5 MS. COLBATH: Objection.

6 A. License agreement for the Marilyn
7 Monroe LLC granted to Dolce & Gabbana, and they
8 also had an arrangement with different entities
9 for the selection of -- I think they were four
10 different photographs. And who they ultimately
11 went with, I don't know, whether it was Corbus
12 or Getty or what. So I don't know what images
13 they -- who they selected the images from.

14 Q. When you say, "I think there were
15 four different photographs" in your prior
16 answer, were you referring to four different
17 photographs of Marilyn Monroe?

18 A. Yes.

19 MR. MINCH: Objection.

20 Q. When you said you don't know who
21 they ultimately went with, Corbus or Getty --

22 MR. MINCH: Objection.

23 Q. -- what did you mean by that?

24 A. They selected and paid for four
25 different photos from -- whether they got those

1 ROESLER

2 from Getty, Corbus, Shaw, whoever, they paid
3 for the use of those photos in addition to the
4 license with the Marilyn Monroe LLC.

5 Q. When was that agreement signed?

6 MR. MINCH: Objection.

7 Q. With Dolce & Gabbana?

8 A. As I testified a few moments ago, I
9 don't know. Eighteen months ago, give or take.
10 I seem to recall it was like a year ago this
11 past summer. So 18 months ago. I think that's
12 when I was in regular contact with Meta, Edie,
13 and Larry.

14 Q. Is that deal ongoing?

15 A. I'm sorry?

16 MR. MINCH: Objection.

17 MS. COLBATH: Objection.

18 Q. Is that deal between MMLLC and
19 Dolce & Gabbana ongoing, in force as we sit
20 here today?

21 MS. COLBATH: Objection.

22 A. I don't think so. I think it was
23 pretty limited program.

24 Q. In what way?

25 MR. MINCH: Objection.

1 ROESLER

2 Q. Time?

3 A. Timewise.

4 Q. Who made the decision -- when you
5 say it was pretty limited timewise, what do you
6 mean?

7 MR. MINCH: Objection.

8 A. It may only have been a six-month
9 promotion. Limited number of tee-shirts. It
10 was a small deal. It may have been a couple
11 thousand tee-shirts. Higher-end tee-shirts
12 that they sold, but a small program.

13 Q. And they paid MMLLC for the use of
14 those images?

15 MS. COLBATH: Objection.

16 MR. MINCH: Objection.

17 A. No. They paid -- they paid Marilyn
18 Monroe LLC for the license to use the
19 intellectual property rights of Marilyn Monroe.

20 Q. Thank you. You had mentioned
21 that -- getting back to the beginning of how we
22 got into this --

23 (Discussion off the record.)

24 Q. You mentioned that Larry had
25 discussions -- was having discussions with

1 ROESLER

2 Dolce & Gabbana; correct?

3 A. Correct.

4 Q. And it's because of this unknown
5 party within Dolce & Gabbana that you know of
6 these discussions; correct?

7 MR. MINCH: Objection.

8 MS. COLBATH: Objection.

9 A. Right.

10 Q. Do you know what Larry said to
11 Dolce & Gabbana?

12 MR. MINCH: Objection.

13 A. He told them not to deal with us,
14 that they didn't need a license from us, that
15 they could get all the rights from him and just
16 use the photographs, and that they owned the
17 copyrights to the photographs, and there was no
18 reason to pay anything else.

19 Q. But sitting here today, you don't
20 know what photographs were at issue.

21 MS. COLBATH: Objection.

22 MR. MINCH: Objection.

23 A. Correct.

24 Q. And sitting here today, you don't
25 know whether Larry ever sent a cease-and-desist

1 ROESLER

2 letter to Dolce & Gabbana, do you?

3 MR. MINCH: Objection.

4 A. Well, based on what we've talked
5 about, I don't know why he would have sent a
6 cease-and-desist letter. I'm not sure what you
7 mean by that.

8 Q. You had mentioned that this party
9 within Dolce mentioned that Larry had mentioned
10 to this employee of Dolce & Gabbana that they
11 didn't need a license from MMLLC.

12 A. Right. Well, I wouldn't
13 necessarily --

14 MS. COLBATH: Let me object.

15 MR. MINCH: Objection.

16 MS. COLBATH: Could I have the
17 question read back?

18 MR. SERBAGI: He is in the middle
19 of his answer. That is blatant coaching.

20 THE WITNESS: Maybe if I answer it
21 you won't need it read back.

22 A. Just to clarify --

23 Q. Let me know.

24 A. I wouldn't characterize
25 communication from the Shaws or their

1 ROESLER

2 representative to a licensee saying that they
3 own the copyrights as a cease-and-desist
4 letter. I wouldn't characterize it as that,
5 because it's a negotiation at that point.

6 So it's -- there's nothing to cease
7 and desist, I mean unless you said you could
8 cease and desist the negotiation. So there's a
9 discussion going on where -- where they're
10 making certain representations that you don't
11 need to continue those discussions with Marilyn
12 Monroe LLC. You can just continue those
13 discussions with us.

14 Q. Right. Thank you for clarifying
15 that.

16 A. Okay. So we're on the same --

17 Q. That's helpful. Thank you. Did --
18 do you know whether Dolce & Gabbana -- let's
19 get back do the purported representations that
20 this employee within Dolce made.

21 A. Uh-huh.

22 Q. So the record is clear and it
23 doesn't get garbled up in all the other
24 questions I've asked, you don't know the name
25 of the employee?

1 ROESLER

2 A. No.

3 MS. COLBATH: Objection.

4 MR. MINCH: Objection.

5 (Discussion off the record.)

6 Q. Do you know whether that employee
7 is currently at Dolce?

8 A. No.

9 Q. Did you take any notes when you had
10 a discussion with this employee at Dolce?

11 A. No.

12 Q. Is there anything in your files
13 that memorialize this purported discussion with
14 Dolce?

15 MR. MINCH: Objection.

16 A. Perhaps. Perhaps.

17 Q. Would that have been something that
18 you would have produced in connection with this
19 litigation?

20 MR. MINCH: Objection.

21 A. I don't know.

22 Q. Other than -- and this is all
23 getting back to the initial question, which
24 was, you had stated there were representations
25 that the Shaw Family made to various licensees.

1 ROESLER

2 And one of those representations was in
3 connection with this tee-shirt program with
4 Dolce & Gabbana. Putting that aside, are there
5 any other representations that you know of that
6 the Shaw Family made to licensees of MMLLC
7 regarding images of Marilyn Monroe?

8 MR. MINCH: Objection.

9 MS. COLBATH: Objection.

10 Q. And rights they purportedly have in
11 them?

12 MR. MINCH: Objection.

13 MS. COLBATH: Objection.

14 MR. MINCH: I want to make sure,
15 for the record, that we understand -- I'm
16 a little bit lost right now what
17 representations you're speaking of. I
18 don't want to testify for Mr. Roesler.
19 I'm confused. I'm not sure -- I want to
20 make sure that Mr. Roesler is clear.

21 Q. Do you understand what I'm talking
22 about?

23 A. I have a question for you.

24 Q. Sure.

25 A. On your --

1 ROESLER

2 Q. Just like a lawyer to ask a
3 question of the --

4 A. When you say licensees of Marilyn
5 Monroe LLC, do you want to broaden that to
6 companies that they've done business with that
7 aren't licensees of Marilyn Monroe LLC?
8 Because the universe, so to speak, is companies
9 that have licenses with Marilyn, some of which
10 do and do not have also licenses with the
11 Shaws. And then the rest of that universe is
12 the companies that just have licenses with the
13 Shaws and not with Marilyn Monroe LLC.

14 So I was confused by your question.
15 You said just Marilyn Monroe LLC.

16 Q. You're absolutely right. That is a
17 good distinction to make. I'd like to make
18 that distinction right now. Let's talk about
19 the universe of companies that have done
20 business with MMLLC or would like to do
21 business with MMLLC, anybody that -- any
22 company that had discussions with MMLLC.

23 A. Okay.

24 Q. Let's limit the next portion of
25 this discussion to that. And are there any

1 ROESLER

2 specific communications that you know of from
3 the Shaw Family to those -- let's call them
4 prospective and actual licensees of MMLLC --
5 regarding rights that the Shaw Family has in
6 Marilyn Monroe?

7 A. It's my understanding there are,
8 but the specifics of those would probably -- I
9 don't necessarily know the specifics of it
10 because I'm not necessarily on the front lines
11 of all of those discussions. And I can just go
12 back to what I said earlier, which was I know
13 often the people that we're working with are
14 also being -- have encounters with the Shaw
15 Group or their representative, Bradford. And
16 it creates the -- what do you call it --
17 confusion, the questions, and so forth.

18 Q. Let's get into details of that. Do
19 you know of any particular -- can you, sitting
20 here today, name a specific licensee that would
21 fall into what you describe as this confusion
22 that's been created?

23 MR. MINCH: Objection.

24 MS. COLBATH: Objection.

25 A. Well, again, some of the details of

1 ROESLER

2 all the various licensees that would fall in
3 there, I can't necessarily recite all of those,
4 but there's numerous ones. I mean, there's --
5 you know, we had a situation with -- I believe
6 the company was Frieze. It's just hard for me
7 to remember some of the names. But quite a
8 few. I'd say in excess of 15 or 20 different
9 companies in different parts -- I mean,
10 different discussions with these different
11 companies in terms of --

12 Q. Let's talk about it. With respect
13 to Frieze, what happened there?

14 MR. MINCH: Objection.

15 A. Well, it's easier to explain the
16 end result, and then, you know, back it up from
17 the end result. It's difficult for me to give
18 you all the details of what happened, you know,
19 in-between. But the end result is often these
20 people either don't do a program at all, or
21 they do a program and just do a license with --
22 through Bradford with the Shaw -- with the Shaw
23 Group.

24 So I guess, you know, if you ask me
25 all the various details of how all of those

1 ROESLER

2 transpired, I don't necessarily know all those
3 details.

4 Q. All right. We were talking about
5 Frieze.

6 A. Okay.

7 Q. I'm going to ask you the details of
8 that. If you can't remember, you can't
9 remember.

10 A. Okay. Fair enough.

11 Q. What did -- what are the
12 representations that Shaw Family purportedly
13 made to Frieze?

14 MR. MINCH: Objection.

15 A. Well, my recollection was that we
16 had communicated with Frieze and objected to
17 the use of -- the use of the words "Marilyn
18 Monroe" because we had a trademark in the
19 apparel class and they were using images of --
20 I'm sure it was Shaw. I mean, sometimes they
21 get different photographers messed up, but I
22 think in this case it was Shaw. And they said
23 that they were comfortable with the
24 representations and indemnities they had from
25 the Shaw and Bradford Group and they didn't

1 ROESLER

2 need a license for Marilyn Monroe LLC.

3 Q. For what? A license for what?

4 MR. MINCH: Objection.

5 A. A license for, in this case,
6 trademarks of Marilyn Monroe.

7 Q. You're referring to the written
8 word, "Marilyn Monroe"?

9 A. Yes.

10 Q. Specifically in stylized format;
11 correct?

12 MS. COLBATH: Objection.

13 Q. Cursive.

14 A. I'm not sure I'm referring to it
15 specifically in that --

16 Q. Okay. With respect to Frieze, were
17 there discussions between MMLLC -- you
18 mentioned that Frieze said they didn't need a
19 license from MMLLC with respect to the
20 trademarks. Did they say to you, Frieze, that
21 they didn't need a license from MMLLC with
22 respect to any of the images of Marilyn Monroe
23 that you have in your collection --

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

1 ROESLER

2 Q. -- and that MMLLC has in its
3 collection?

4 A. I'm sorry. The images. I'm
5 confused by what you mean by that. They'd
6 already selected their images.

7 Q. So you had a deal with Frieze for
8 the images of Marilyn Monroe?

9 MR. MINCH: Objection.

10 MS. COLBATH: Objection.

11 Q. What did you mean by they already
12 selected the images?

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 A. They had a license from the Shaws
16 for various images on tee-shirts of Marilyn
17 Monroe. So presumably they had a copyright
18 license with the Shaws. I never saw the
19 license.

20 Q. You said that they have a license
21 from the Shaws for various images of Marilyn
22 Monroe; correct?

23 A. That's correct.

24 Q. Do you agree?

25 (Brief interruption.)

1 ROESLER

2 (Discussion off the record.)

3 Q. Do you know what images of Marilyn
4 Monroe we're talking about?

5 A. No.

6 MR. MINCH: Objection.

7 Q. Do you know if those images of
8 Marilyn Monroe were protected by copyright or
9 not?

10 MR. MINCH: Objection.

11 A. No.

12 Q. Did you undertake to find out the
13 answer to that question prior to your
14 deposition today?

15 MR. MINCH: Objection.

16 A. No.

17 Q. You said earlier that presumably
18 the deal between the Shaw Family and Frieze was
19 for the copyright -- licensing of the
20 copyright; correct?

21 A. Correct.

22 Q. But you don't know that's the case,
23 do you?

24 MR. MINCH: Objection.

25 A. I mean, I can't make a definitive

1 ROESLER

2 statement on that. That's why I said
3 presumably.

4 Q. You didn't see the agreement
5 between the Shaw Family and Frieze, did you?

6 MR. MINCH: Objection.

7 A. No.

8 (Discussion off the record.)

9 Q. So we're clear, the MMLLC had not
10 offered Frieze -- did Frieze come to MMLLC and
11 request permission to license any images of
12 Marilyn Monroe?

13 MR. MINCH: Objection.

14 A. No.

15 Q. So I'm going to ask you a couple of
16 obvious questions. I'd like to get it for the
17 record. With respect to images of Marilyn
18 Monroe, Frieze -- there was never a deal
19 memorandum between CMG, MMLLC, and Frieze for
20 the licensing of images of Marilyn Monroe;
21 correct?

22 MR. MINCH: Objection.

23 A. Correct.

24 Q. And there was never any formalized
25 license agreement memorializing the terms of

1 ROESLER

2 any agreement for Frieze to license images of
3 Marilyn Monroe; isn't that right?

4 MR. MINCH: Objection.

5 A. Correct.

6 Q. Now, to refresh my recollection,
7 what representations did you say that the Shaw
8 Family had made to Frieze regarding images of
9 Marilyn Monroe, if any?

10 MR. MINCH: Objection.

11 A. That they didn't need any license
12 to proceed with their program of -- that
13 involved Marilyn Monroe from Marilyn Monroe
14 LLC.

15 Q. And in particular, you identified
16 the trademarks.

17 A. The trademarks or right of
18 publicity.

19 Q. So you're saying that Larry Shaw
20 said to someone at Frieze that they didn't need
21 a right of publicity for Marilyn Monroe?

22 MR. MINCH: Objection.

23 A. You're -- Larry was Dolce &
24 Gabbana. I'm not sure who Frieze was, whether
25 it was Bradford or --